

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**KENDELL TEALER,**

**Defendant.**

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**Case No. 8:14CR185**

**ORDER**

This matter is before the court on the plaintiff, United States of America's Motion to Consolidate (#161). The government moves the court for an order consolidating this case with case No. 8:15CR343 for purpose of trial and the litigation of pretrial matters. The defendant, Kendell Tealer, has filed a Response (#162) wherein he objects to consolidation for trial, but does not object to consolidation of the cases under the authority of one Article III judge for pretrial litigation. Since the filing of the motion to consolidate and the response, both cases are now assigned to United States Senior District Judge Joseph F. Bataillon.

Upon consideration of the pending charges against the defendant, I find that while the charges may properly be joined under Federal Rule of Criminal Procedure 8(a), that it would be improper to allow consolidation for trial under Federal Rule of Criminal Procedure 14(a) given the strong possibility that joinder for trial would be unduly prejudicial to the defendant. While many of the allegations against the defendant share many common elements with his co-defendants in Case No. 15CR343, the fact that the defendant in 8:14CR185 is charged with the murder of Mickle Graham clearly concerns the court as to his claim of prejudice. It is also my belief that evidence of the Graham murder is not easily compartmentalized by a

properly-instructed jury and rebuts our circuit's presumption that a jury can, in fact, properly consider each count independently. United States v. Bear Stops, 997 F.2d 451, 549 (8th Cir. 1993).

I find that based upon the charges and the facts of this case, the defendant would be unfairly prejudiced by consolidating the cases for trial. Given that many of the issues in the cases may result in similar pretrial motions, the court will continually review pending pretrial motions and in the interest of judicial economy may consolidate motions for hearing.

**IT IS ORDERED** that the government's Motion to Consolidate (#161) is denied.

Dated this 19th day of February 2016.

BY THE COURT:

s/ F.A. Gossett, III  
United States Magistrate Judge